IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 896 OF 2005
IN
L.A.R. NO. 88 OF 1998

1. The State of Maharashtra)

2. The Special Land Acquisition Officer)
Irrigation No.1, Nashik.)

3. The Executive Engineer)
Karanjwan Project, Trimbak Road, Nashik)..Appellants

versus

Yashwant Kahnu Shirsath)
Adult, Occ. Agriculture)
R/o Kavanai, Tal. Igatpuri, Dist. Nashik.)..Respondent.

Mr. K.K. Tated, Assistant Government Pleader, for the appellants.
Mr. P.B. Shah for the respondent.

WITH
FIRST APPEAL NO. 940 OF 2005
IN
L.A.R. NO. 528 OF 1997

1. The State of Maharashtra)

2. The Special Land Acquisition Officer)
Irrigation No.1, Nashik.)

3. The Executive Engineer)
Karanjwan Project, Trimbak Road, Nashik)..Appellants

versus

Bhausaheb Shankar Shirsath)
substituted as under:)

1. Bhausaheb Shankar Shirsath)
2. Chhaba Baburao Shirsath)
3. Lahanubai Baburao Shirsath)
4. Fulyabai Waman Govardhane)
S. No.1 GPA of S. Nos. 2 to 4)
All adults, r/o Kavanai, Tal. Igatpuri,)
Dist.Nashik)...Respondent.

with

FIRST APPEAL NOS. 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993,994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053 AND 1747 OF 2005

with

Cross Objection (Stamp) No. 13417 of 2007 in F.A. No. 897 of 2005.

with

Cross Objection (Stamp) No. 13721 of 2007 in F.A. No. 940 of 2005.

with

Civil Application (Stamp) No. 13422 of 2007 in F.A. No. 897 of 2005.

with

Civil Application 5635 of 2005 in F.A. No. 940 of 2005.

Mr. K.K. Tated/Mr. Nakhwa/ Mr. A.R. Patil/Smt. Geeta Mulekar, Assistant Government Pleaders, for the State.

Mr. P.B. Shah with Ms. Smita Mane for the opponent- claimants in F.A. Nos. 986, 905, 906, 934, 993, 994, 997, 999, 1000, 1001, 1005, 1007, 1012, 1013, 1014, 1015, 1016, 1017, 1020, 1021, 1025, 1026, 1027, 1029, 1030, 1033, 1035, 1036, 1037, 1038, 1041, 1042, 1046, 1047 and 1051 of 2005.

Mr. S.M. Gorwadkar for the opponent-claimants in F.A.Nos. 879, 898, 899, 900,903, 907, 908, 909, 910, 911, 912, 913, 914, 916, 917, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929,930, 931, 932, 1933, 935, 936, 937, 938, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 1954, 955, 956, 958, 959, 960, 961, 962, 963, 964, 966, 967, 968, 969, 970, 971, 972, 974, 975, 976, 977, 978, 979, 980, 981, 982, 984, 985, 1986, 987, 988, 989, 990,991, 992, 995, 998, 1009, 1011, 1022, 1024, 1028, 1031, 1032, 1038, 1041, 1044, 1048, 1049, 1052 and 1053 of 2005 and Cross Objection (Stamp) Nos. 13417 and 13721 of 2007 and Civil Application (St.) No. 13422/07 and C.A.No. 5635 of 2005.

Mr. Rameshwar N. Gite for the opponent-claimants in F.A. Nos. 996, 1003, 1004, 1006, 1013, 1017,1034, 1039, 1040, 1043, 1045 and 1050 of 2005.

CORAM: **SWATANTER KUMAR, C.J.** &
S.C. DHARMADHIKARI, J.

Judgment reserved on : June 20, 2007
Judgment delivered on: July 19, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

The above two appeals were taken as lead cases out of the bunch of 159 First Appeals listed together for hearing. Various learned counsel appearing for the respective parties advanced their arguments by referring to the evidence in these two cases. Thus, by this common judgment, we will dispose of all these appeals as they are based upon

common evidence and on somewhat similar facts.

2. The facts necessary for disposal of these appeals are that the Special Land Acquisition Officer, exercising his powers on behalf of the Government, issued a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act”), intending to acquire the land for the project of Mukane Dam from different villages as they were adjacent to each other. This also included the land from village Kavanai, Taluka Igatpuri, District Nashik. The notification was issued on 25th May, 1994 acquiring nearly 460.92.81 hectors of land. After issuance of this notification, undisputedly the procedure prescribed under the provisions of the Act was followed whereafter the Special Land Acquisition Officer vide his award dated 20th October, 1995, awarded compensation to the claimants in respect of the acquired lands at different rates of Rs. 35,000/-, 40,000/-, 45,000/-, 50,000/-, 55,000/-, 60,000/- and 65,000/- per hector depending upon various factors. The claimants being dissatisfied from the award of the said Officer preferred references under Section 18 of the Act which, in turn, were sent by the Collector to the Court of competent jurisdiction and the 5th Additional District Judge, Nashik, vide his judgment and award dated 31st August, 2004, granted additional compensation to the

claimants at the rate of Rs.1,20,000/-, 1,30,000/- and 1,50,000/- per hector depending upon the revenue to which these lands were assessed. Though the original claimants had accepted the compensation on 16th November, 1995, still they preferred references under Section 18 of the Act which were filed by them on 23rd December, 1995. They claimed compensation at the rate of (i) Rs.4,00,000/- per hector for bagayat/Tari (paddy) land, rabbi land and jirayat land and Rs. 1,00,000/- for pot kharaba land. The possession of the land was also taken by the acquiring authority on 1st July, 1994. Being aggrieved by the judgment and award dated 31st August, 2005, the State filed the above First Appeals before this Court questioning the correctness and legality of the judgment of the Reference Court passed in L.A.R. Nos. 88 of 1998 and 528 of 1997.

3. The impugned judgment is challenged by the State primarily on the ground that the compensation granted by the Reference Court is unduly excessive and, in fact, there is no evidence on record to support the finding recorded by the Court. It is also the contention raised on behalf of the State that the claimants had miserably failed to discharge their onus placed upon them for claiming any higher market value of the acquired land than the one awarded by the Collector. No instances

which are comparable and have the same potential, were proved by the claimants. In order to substantiate their submission, it was vehemently argued on behalf of the State that Exhibit-19 could not form the basis for determining the fair market value of the land as it relates to a small piece and there should have been a deduction of at least 50 per cent from the reflected value. Exhibits-30 and 39 again could not be made the basis for determination of the market value as they related to different villages which were located more than two kilometres away and the land covered under those exhibits was paddy land having a different potential than the acquired land. In order to justify their claims for enhancement, the claimants refuted the submissions made on behalf of the State to argue that, in fact, the compensation should have been granted on the basis of Exhibit-24 where the land in the same village was sold at the rate of Rs. 2 lakhs per hector, Exhibits P-14 and P-15 relating to the adjacent village where the land was sold at the rate of Rs. 2,12,000/- and even on higher prices. These instances were comparable and were having the same potential as stated by P.W.1. Even the awards pronounced by the Court in relation to notification under Section 11 of the Act for acquiring the lands covered by L.A.R. No. 109 of 1997 decided on 29th September, 2004, the compensation was awarded at the rate of Rs.

1,20,000/-. The claimants also relied upon the sale deed dated 14th October, 1993 (Exhibit-17), where the land was sold at the rate of Rs. 1,15,000/- per hector. While referring to this documentary evidence read with the oral evidence led by the claimants, the claimants have claimed a sum of Rs. 3,00,000/- in one of the cross objections being Cross Objection (Stamp) No. 13417 of 2007 which was even barred by time.

4. According to the claimants, the learned Reference Court has fallen in error of jurisdiction by not awarding the same compensation which has been awarded in the area of the adjacent lands and the sale instances which were comparable and related to the lands having the same potential. Thus the claimants have prayed for further enhancement of the compensation.

5. At the very outset, we may notice that the cross objections preferred by the claimants are barred by time. It has been stated in the application for condonation of delay that the claimants are poor persons and the only source of income, that is the land, was taken away by the acquiring authority long time back and for a considerable time compensation was not paid to them which resulted in delay in filing the

cross objections. The State had filed the appeals in the year 2005 and the claimants, though were served for quite some time, but could not file the counter claims because of inadequacy of funds and their limitations that they belong to remote villages. Thus, keeping in view the above unavoidable circumstances, they have prayed for condonation of delay in filing the cross objections. There was some opposition on behalf of the State to this request of the claimants. From the averments made in the application, it is clear that the delay in filing the cross objections is not intentional. The reasons stated are bona fide and are capable of being construed as a sufficient cause within the meaning and scope of Section 5 of the Limitation Act. These are cases of compulsive acquisition and not a voluntary act on the part of the claimants. It can hardly be disputed that the lands which were the principal source of their income have been taken away by the State contrary to their consent. It can hardly be expected of the State to oppose such a request particularly when their Appeals arising from the same judgment are being heard on merits. It is a settled percept of law that provisions of Limitation Act should be construed liberally so as to ensure that justice does not suffer. The Supreme Court has often said that certain amounts of latitude is not impermissible and the expression “sufficient cause” may be considered with pragmatism in justice-

oriented approach rather than technical detection of sufficient cause for explaining the delay. In some cases, the Supreme Court also condoned the delay of nearly 679 days. Reference can be made to the cases of *The Special Tehsildar, Land Acquisition, Kerala* vs. *K.V.Ayisumma,* JT 1996 (7) SC 204 and *State of Haryana* vs. *Chandra Mani and others, JT 1996 (3)* SC 371. The cause shown by the claimants can safely be construed as a sufficient cause emerging from the limitations relating to their needs seen in the light of the past events that their lands were acquired against their wishes and whereafter even compensation was not paid to them for quite some time. It is not even in dispute before us that till date they have actually not received the enhanced compensation granted to them by the Reference Court. For these reasons, we have no hesitation in accepting their application for condonation of delay. Another reason for condoning the delay is that the State appeals arising from the same judgment were being heard by the Court when this request was made on behalf of the claimants. Thus, even the interest of justice would demand that the cross-objections of the Claimants are heard along with the State appeals. Consequently, the delay in filing the cross objections is condoned. The cross objections are admitted for hearing.

6. We have heard the learned counsel appearing for different parties at great length and we are of the view that the findings recorded by the learned Reference Court in the judgment under appeal can hardly be termed as erroneous or contrary to the settled principles of law. However, some aspects of the judgment do require consideration as we find that there is no direct and substantive evidence to justify recording of some findings, particularly in relation to classification of the land. The reliance placed by the claimants upon Exhibit-24 has rightly been rejected by the reference court. It is an agreement executed between Shri Lahanu Valu Ghode and Shri Malu Genu Shirsat for sale of one acre of land from Gat No. 944 for sale consideration of Rs. 40,000/-. This agreement to sell was executed on 17th December, 1993, prior to the date of issuance of notification under Section 4 of the Act in the present case but is inconsequential for being the basis for determination of any fair market value of the land in question. An agreement to sell is no substantive evidence which could in law reflect the real market value of the land in question. Nobody has appeared in the witness box from either of these witnesses to confirm that in furtherance to the agreement to sell, a sale deed was executed or that even there was part performance of the agreement as contemplated under Section 56 of the Transfer of Property Act. A mere agreement to

sell would in no way convey the title in the property and thus be termed as a proper sale instance admissible in evidence for determining the controversy in question. This document has, therefore, been rightly rejected by the learned reference Court. Exhibits-14, 15 and 30 relate to different villages, though adjacent to the revenue estate of the village from where the land in question has been acquired. This evidence clearly shows that the value of the surrounding land was shown to be nearly Rs. 1,20,000/- to Rs. 2,12,000/- per hector.

7. It is a settled principle of law that the land of the adjacent villages can be made the basis for determining the fair market value of an acquired land. This principle of law is qualified by a clear dictum of the Supreme Court itself that wherever direct evidence i.e. the instances from the same village are available then it is most desirable that the Court should consider those instances rather than relying upon sale instances of the adjoining land. The exclusion of these exhibits from the zone of consideration for determination of the controversy thus cannot be said to be incorrect in law. The land in Exhibit-30 relates to village Mukane,while Exhibits-14 and 15 relate to the other two villages viz. Modade and Rayambe. These villages are located around the acquired land but have a better potential as they are closer to

industrial area and the Highway. The evidence tendered in relation to the land of the adjacent villages would be a relevant piece of evidence for determining the market value of the land and even the awards relating to those adjoining villages would also be a relevant consideration. Reference in this regard can be made to the case of *Sham Krishan Chandiwala* vs. *Union of* India, 1978 (14) DLT 83 and judgment of the Supreme Court in the case of *Harcharan* vs. *State of* Haryana, AIR 1983SC 43, where the Court stated that subject to the test of comparison of land areawise, topographywise and usewise, awards and transactions in relation to the adjacent areas are the best evidence with regard to valuation of price of land. Still, in the case of *Gokal* vs. *State of Haryana,* AIR 1992 SC 150, the Court was concerned with awarding of compensation to the land similarly situated but vide different notifications issued by the Government under Section 4 of the Act. Trend in increase of the land prices in those areas was also taken to be a relevant consideration.

8. Potentiality of the land is the true element of value and besides its basic concept it also includes the probabilities and possibilities in regard to the use of the area. The potential of the land has to be of the period relatable to the time of acquisition and mere

future potential may not be a relevant consideration. The distinction between surrounding areas which are already developed, by itself would not render the acquired land, which is not so developed, for claiming similar amount. A Division Bench of Delhi High Court in the case of *Gian Chand (deceased) through LRs and others* vs. *Union of India aand others,* decided on 9th March, 2006 held as under:

> " A Division Bench of this Court in the case of *Anar Singh* vs. *Union of India*, AIR 1985 Delhi 298 held as under:-
>
> " In our opinion the learned Judge assessed the value on a totally wrong basis. Potentiality is a right and proper subject for consideration in ascertaining the compensation to be paid on expropriation. Prospects and possibilities of future development ought to be taken into account in determining the price to be paid for property compulsorily acquired.
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> One other observation must be made here. The learned judge went by his experience. But what is that experience he has not told us. A case has to be decided not on one's own predications but on such materials as are available to the valuer. If there are no instances of sale available of this very village it is permissible for the valuer to go to the adjoining village and ascertain the value of the land situated in close proximity. He can then give proper weight to the factors not favourable and unfavourable in the process of evaluation. It has to be remembered that the "value of the potentiality must be ascertained by the valuer "on such materials as are available to him and without indulging in the feats of the imagination" (Narayana Gajapatiraju (supra) at p. 548 (of ILR): (at P. 103 of AIR 1939 PC 98)."
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> 15. Reference in this regard can also be made to another judgment of this Court in the case of *Mani Ram*

Sharma and etc. vs. *Union of India*, AIR 1986 Delhi 140.

16. Prospective use of a land or its future potential and development by itself may not be a very material consideration for the Court in determining the value of the acquired land. (Refer *Tarlochan Singh and another* vs. *State of Punjab and others*, 1995 LACC 283 (Supreme Court). But once the claimant has discharged its onus by placing on record appropriate evidence by filing judicial pronouncements, sale deeds or other relevant piece of evidence, even of the adjacent villages, in that event the court would have to take into consideration the potential of the land, keeping in view the larger development.

17. In the present case, the land has been acquired for 'Planned Development of Delhi', which itself is a public purpose and a continuing one. The development obviously cannot be restricted to a limited area and it is intended to develop the entire city of Delhi. This expression has been given a larger meaning and connotation. 'Planned development of Delhi' shall take within its ambit and scope the prospective development as huge tracks of lands are acquired for that purpose. With the acquisition of an area for planned development of Delhi, the prices of the lands of the adjacent villages is bound to go up. This is a normal and natural consequence.

18. The learned counsel appearing for the respondent while relying upon the judgment of the Supreme Court in the case of *Kanwar Singh and others* vs. *Union of India*, JT 1998 (7) SC 397 contended that same compensation cannot be awarded for the lands falling in two different villages and compensation in respect of the land of one village in comparison to the compensation granted in adjoining village is not a relevant consideration.

19. Firstly, the contention of the learned counsel appearing for the respondent is based upon misreading of the law enunciated in the case of *Kanwar Singh* (supra). The Supreme Court in that case has clearly stated that generally there would be a different situation and potential of the land situated in two different villages, but once it is proved that

> situation and potential of the land in two different villages are same, then they could be awarded similar compensation. The claimants have to demonstrate that the compensation offered by the Collector is not adequate and does not reflect the true market value of the land as on the date of notification in either of the concerned villages."

9. In light of the above principles, it can safely be stated that it is for the claimants to lead cogent evidence for claiming higher amounts with reference to the lands of the adjacent villages. We have already indicated that the lands shown in Exhibits-30 and 42 relate to different villages and those villages in terms of the evidence on record are better placed, closer to industrial areas and they would not be, therefore, a fair guide for determination of fair market value. The Reference Court considered it necessary not to discuss the matter in any further elaboration. Having relied upon Exhibit-19 and with reference thereto, it recorded the following findings in its judgment.

> " 36. In the light of the said principles, let us now take into consideration as to which of the sale instance as relied on by the claimants can be helpful to us to determine the correct market value of the acquired lands. The sale deed at Exh. 30 though is duly proved by the claimants appeared to be pertaining to the lands from different village area. Here we have a sale instance of the land which is more proximate in time, in the form of sale deed at Exh. 19 and therefore in the light of the ratio laid down by the Apex Court in the case cited supra (AIR 1999 SC 317), I do not find it proper to consider this sale deed (Exh.30) as a determinative factor. It is no doubt true that the lands

at village Mukane and Kavanai are situated in the same taluka ande are adjacent to each other and are having similar geographical situation. Even then the potentialities of these lands differ in view of their locations and the distances from the industrial area. I am therefore not inclined to accept the submissions of the learned counsels for the claimants that the market value be determined at the same rate at whichthe land in this sale deed was sold.

37. For the similar reasons, I am not inclined to take into consideration the valuations made by predecessor in the Land References referred above. So far as the evidence in theform of an agreement of sale at Exh. 24 in L.R. No. 528/97 is concerned, it is also of no help to the claimants. This sale instance is pertaining to the land Gat No. 437 from village Mukane. This transaction appears to be at the rate of Rs. 3,18,500/- i.e. At the rate of double than that of the rate decided by my predecessor in the said Land References. This agreement of sale is not finally executed by executing a registered sale-deed. The deed is dated 17.12.1993 i.e. after the publication of the notification of acquisition of the lands in the village area of Mukane. The probability of registration of such agreement just for creating an evidence in acquisition proceedings cannot be over-ruled. I am thus not inclined to accept this transaction as a good piece of evidence to determine the market value of the acquired lands.

38. The sale instance at Exh. 19 by which a piece of land admeasuring 40 R. from village Kavanai bearing Gat No. 149 is sold at the consideration of Rs. 60,000/- i.e. Rs. 1,50,000/- per hectare. This land also appears to be a jirait land yielding crops in one season only such as rice etc. and appears to be similar in fertility and quality with that of the lands acquired."

10. The above exhibits relate to different villages and are not

identically situated like the acquired land. Exhibit-24 was also not considered to be a relevant piece of evidence by the Reference Court. We accept the reasoning given by the Reference Court in relation to this evidence adduced by the claimants. Referring to the judgments of the Reference Court in other cases, the Court dealing with the present references found that the judgments in L.R. Nos. 348/96, 262/96 and 168/95 relating to village Mukane and Rayambe were again found to be not relevant for determination of the fair market value for the reason that in those cases the location and potential of the land was different than the present lands and primarily for their distance from the industrial area in Igatpuri. It was also noticed that there was some difference in the valuation relatable to the crop of the lands in question.

11. Having given its considered thoughts to the above evidence, the Reference Court then proceeded to rely upon the judgment of the Supreme Court in *Shaji Kuriakose* vs. *Indian Oil Corporation Limited,* 2001 (2) LACC to say that the comparable sale instances is the safest method for determining the market value of the acquired land. The Court placed reliance upon the following dictum of the Supreme Court.

> “That courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land, comparable sales method of valuation is preferred than

other methods of valuation of land such as capitalisation of Net Income Method or Expert Opinion Method. Comparable sales methods of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it has been sold in open market at the time of issue of notification under section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfillment of those factors the compensation can be awarded according to the value of the land reflected in the sales. The factors laid down inter alia are (1) the sale must be a genuine transaction, that (2) the sale deed must have been executed at the time proximate to the date of issue of notification under section 4 of the Act that (3) the land covered by the sales must be in vicinity of the acquired land, that (4) the land covered by the sales must be similar to the acquired land and that (5) the size of the plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered, by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality,m shape site or nature of land between land covered by sales and land acquired, it is open to Court to proportionately reduce the compensation for acquired land than what is reflected in the sales

depending upon the disadvantages attached with the acquired land."

12. The Court also relied upon another judgment of the Supreme Court in the case of *Kantaben* vs. *SLAO,* AIR 1990 SC 103 where the Court stated the principle that the latest sale instances closer to the date of notification for acquisition of the land should be taken into consideration by the Court. On this basis, the most relevant piece of evidence was Exhibit-19 and applying the ratio of the principle laid down by the Supreme Court reported in AIR 1999 SC 317, the Court proceeded to determine the compensation on the basis of Exhibit-19. Even this approach of the Reference Court cannot be faulted with. Exhibit P-19 is a sale deed vide which a piece of land admeasuring about 1 hectare 63 ares + 24 area pot kharaba was sold for a sum of Rs. 60,000/- by means of a registered sale deed dated 14th October, 1993. The land was an agricultural land from the revenue estate of village Kavanai, Tal. Igatpuri. The entire acquired lands, subject matter of the present appeals, also relate to the revenue estate of the same village. Thus, Exhibit -19 is the relevant and comparable piece of evidence. The acquired land being agricultural land similarly situated would also have the same potential. P.W.1, Bhausaheb Shankar Shirsath, stated that village has Gram Panchayat Office and all facilities

such as electricity, hospital, roads, etc. are available and there is a Fort within the revenue estate of the village. According to him, Mukane, Rayambe and Wadivarhe are the villages adjacent to village Kavanai and geographical situation of these villages and quality of land in the area are similar. He further stated that the Railway Station is at a distance of two kilometres and Igatpuri is at a distance of 8 to 10 kilometres and acquired lands are within one kilometer distance of village Kavanai. Another witness, Shivaji Mahadu Patil (P.W.2) in his statement stated that he had purchased the land Gat No. 149 in village area of Kavanai from Mahadu. The land was jirayat and purchased at the total consideration of Rs.60,000/-. In the light of this oral and documentary evidence, it has to be construed that Exhibit P-19 is a relevant and comparable sale instance which can easily be made the basis for determination of the fair market value of the land in question.

13. The value of the lands in terms of Exhibit 19 comes to Rs.1.50 lacs per hector. However, it is argued on behalf of the State that this is a small piece of plot and thus cannot be a determinative factor for adjudicating the compensation payable to the claimants. Deduction more of than 50% should be made on account of small size of the plot. There is a basic fallacy in this submission. Firstly, the size of the plot

sold by Exh 19 cannot be termed by any standard as a small. It is .not a plot of 500 square yards or 1000 square yards. One acre of land had been sold vide Exh 19 and this is in 1990s. It cannot be construed as a plot, which would justify deduction at the rate of 50%. We may also notice that the purpose of acquisition was for Mukane dam and not for developing the area. Even if we were to apply some deduction from the price indicated in Exh 19, that will have to be set off against the increase in the value of the land for the intervening period of Exh 19 and the date on which the notification under section 4 of the said Act was issued. The notification was issued on 2nd May 1994, while sale deed Exh 19 was executed on 14th October 1993. It has come in the statements of the witnesses as well as in the documents that in between there was increase in the value of the land. The trend of increasing the value of the land even in the surrounding area is a relevant consideration. The respondents have failed to lead any evidence to show that there was transaction of any lesser value in relation to the land falling in the revenue estate of Kavanai. We are conscious of various judgments of the Supreme Court where deduction has been provided while determining the market value of the land at the rate of 10% or even at 50% for various reasons and on different counts. Be that as it may. In view of the reasons indicated above, we do not consider it just and fair

to apply any deduction in excess of 10% of the value indicated in Exh 19. In fact even before us the parties are ad-idem that Exh 19 is a comparable and relevant piece of evidence, with reference to which, just and fair market value of the land as on the date of acquisition could be fixed. Even the learned Reference Court did not apply any deduction on this count and awarded Rs.1.50 lacs per hector in relation to some of the acquired lands. The classification made by the Reference Court has also been questioned before us in the present appeals, which we will shortly proceed to discuss. Thus in our view, there is no occasion before the court to apply any deduction in relation to Exh 19, which is identical to the land in question in terms of potential, user, value and utility.

14. Now we will proceed to discuss the merit or otherwise of the contentions in relation to the classification of the acquired lands, which has been differently valued by the Reference Court. We may notice that in paragraph 40 of the impugned judgment the Court has specifically noticed that " In this group of references there are various lands however their crop conditions indicate that they are in majority single crop lands. There are very few double crop lands. So the valuation of the land will have to be made with the same measure in the form of sale instance at Exh 19". Despite the above noting the land was divided

into three categories by the Reference Court and they were granted compensation a the rate of Rs.1.20 lacs, Rs 1.30 lacs and Rs. 1.50 lacs per hector respectively. The categorisation of land is based on the reasoning that the lands were differently assessed to land revenue. The reasoning for this categorisation is recorded by the Reference Court in paragraph 27 of the impugned judgment which reads as under:

> "It also appears from the record that the revenue assessment in the year 1991-92 has not been changed during the subsequent years also. There thus appears substance in the submission that the revenue assessments are not revised in last many years even though the quality of the lands is improved by the agriculturists by leveling them and by bringing practically the entire area of the lands under cultivation".

The above reasoning of the court is not in conformity with any of the principles governing determination of just and fair market value of the land at the time of acquisition.

15. Whatever principles of computation for enhancement or otherwise of the compensation is adopted by the reference court it must support such a view by appropriate reasonings. There is documentary evidence on record that the price of the land of adjoining villages has a increasing trend and the sale deeds placed on record of the lands from

the adjacent villages reflected much higher price. It may not be necessary in the given facts of the case for the court to adopt price of adjacent villages but certainly this is not impermissible. Once the instances are comparable, even of the lands acquired from different villages can form the basis of entire market value as held by the Supreme Court in the case of Union of India vs Bala Ram Gupta and anr. AIR 2004 SC 3981. In the present case evidence of sale instances from same village and part of the acquired land had been proved by the claimants. Thus it would not be necessary for the court to deliberate on the value shown in the sale instances of the adjoining lands in the village. It is equally known principle of law that the court while determining the compensation has to refer to the evidence which has greater proximity and is close to the date of notification issued under section 4 of the Act and some extent of guess work has to be applied by the court. In the case of Chimanlal Hargovinddas vs Special Land Acquisition Officer and anr AIR 1988 SC 1652 the Court court stated the principles beyond ambiguity and the court capitualised the factors regulating the discretion of awarding compensation by the court as under:

> "Before tackling the problem of valuation of the land under acquisition it is necessary to make some general observations. The compulsion to do so has arisen as the Trial Court has virtually treated the award rendered by the Land Acquisition

Officer as a judgment under appeal and has evinced unawareness of the methodology for valuation to some extent. The true position therefore requires to be capsulized.

4. The following factors must be etched on the mental screen:

(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act(dates of Notifications under Sections. 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Some times instances are rigged up in anticipation of Acquisition of land).

(9) Even post notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factOrs.

(14) The exercise indicated in Clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

Plus factors	Minus factors
1. smallness of size.	1. largeness of area.
2. . proximity to a road.	2. situation in the interior

at a distance from the road.

3. frontage on a road.

3. narrow strip of land with very small frontage compared to depth

4. nearness to developed area.

4. lower level requiring the depressed portion to be filled up.

5. . regular shape.

5. remoteness from developed locality.

6. . level vis-a-vis land under cultivation

6. some special disadvantaious factor which would deter a purchaser.

7. special value for an owner of an adjoining property to whom it may have some very special advantage.

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract or block of land of say 1000 sq. yds or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be looked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own facts pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17)These are general guidelines to be applied with understanding informed with common sense.

....

9. The more serious grievance of the appellant however is that the High Court has depressed the market value excessively in evaluating the land in question at Rs. 7,000 per acre as compared to the land abutting on the Ganeshkhand Road valued at Rs. 20,000 per acre, the land abutting in the interior of Survey No. 86 valued at Rs. 16,000, and land abutting on Pashan Road valued at Rs. 12,000 per acre. A glance at the sketch on the record shows that the appellant's land is situated very much in the interior as compared to the other parcels of land. It is in the midst of large blocks of undeveloped land. A hypothetical purchaser would not offer the same market value for lands with such a situation as lands which are nearer to the developed area and abut on a road or are nearer to a road. The development of lands which are nearer to the developed area and nearer to the road can reasonably be expected to take place much earlier. Only after such lands are developed and construction comes up, the development would proceed further in the interior. It would not be unreasonable to visualize that a considerable time would elapse before development could reach the block of undeveloped land located in the interior. Besides, the land which is situated in the interior does not fetch the same value as the land which is nearer to the developed area and nearer to the road. If a hypothetical purchaser opts to purchase the land situated in the interior in the midst of an undeveloped area, he would doubtless take into account the factor pertaining to the estimated time for development to reach the land in the interior. For, his capital would be unprofitably looked up for a very long time depending on the estimated time required for the development to reach the land in the interior. Meanwhile he would have to suffer loss of interest. It is, therefore, understandable that the land in the interior would fetch much smaller price as compared to the lands situated nearer to the developed locality. More so as all these factors are incapa ble of precise or scientific evaluation. The valuer has to indulge in some amount of guess work and make the best of the

situation. The High Court having accorded anxious consideration to all these factors of uncertainty has arrived at the valuation of Rs. 7000 per acre. Says the High Court in paragraph 51 of the Judgment:

"This brings up for final consideration the plots which we have described as interior plots in all the survey numbers and which do not have a frontage on the roads. A lower price will have to be provided for these plots, since the plot-holders will have to spend moneys for getting water and drainage connections which are given only upto the Municipal Roads. Then again, in our opinion, the interior plots would not be sold at all as long as any of the plots having a frontage on Pashan Road or Baner Road are sold, though once such plots have been disposed of the demand for interior plots would certainly pick up. Here again, it is impossible to be precise in fixing the value; but in our opinion the interior plots may fairly be valued at Rs. 7,000 per acre. As stated earlier, the sales of these plots would commence after all the plots having a frontage on Pashan Road and Baner Road are disposed of i.e. after 12 years, and we may say that those plots would be sold within a period of about 4 years".

10. It is not possible to find fault with the reasoning or conclusion of the High Court. The High Court was day in and day out engaged in valuation of the lands in different parts of the state and was fully aware of the landscope. There is no yardstick by which the future can be forseen with any greater degrees of preciseness. The High Court has made the estimate as regards the time lag for development to reach the appellant's land to the best of its judgment. Having taken into account all the relevant factors, the High Court has arrived at the aforesaid determination. And in doing so, the High Court has not committed any error or violated any principle of valuation. It is purely a question of fact and it is not possible to detect any error even in the factual findings recorded by the High Court. In fact the High Court has been extremely considerate and has approached the question of valuation

> with sympathy and understanding for the land owner. The High Court did not opt for an easy way out by taking the view that since there was no comparable instance of undeveloped lands in the interior on the basis of which the valuation of the appellant's land could be made, the Award made by the land Acquisition Officer should remain undisturbed."

16. The limited permissible guess work cannot be void of plausible reasoning. The reference court erred in not examining a very important factor that the lands were subjected to different land revenue at a point much earlier to the date of notification. The intervening period exceeded more than 3 to 4 years, during which value and potential of the land had considerably changed. Utility of the land has to be looked into from its surrounding. Probably by that time the lands being agricultural lost its significance because of the surrounding areas having developed and furthermore the fact that the entire land was being acquired for a common purpose. These are some significant factors which would not support the view of the reference court in regard to the categorisation of the land. Entire land was agricultural land and there was no evidence on record to point out any material differentiation between the different pieces of land. This is further illustrated from the fact that 5 categorisation of the land effected by the Collector were fond to be incorrect by the reference court and it restricted the categorisation of the land only into 3 categories. From the

oral as well as documentary evidence we are unable to accept the view of the reference court and feel that the claimants are entitled to uniform compensation.

17. In the case of *O. Janardhan Reddy and others* vs. *Spl. Dy. College, L.A. Unit-IV LMD, Karimnagar, A.P. And others,* (1994) 6 SCC 456, the Supreme Court while dealing with the market value of the agricultural land held as under:-

> 10. When agricultural lands are acquired under the Act, the owners of such lands or persons who have interest in them become entitled to payment of compensation awardable for such lands under the act. The main component of such compensation would be the market value of the acquired agricultural land. Market value of agricultural land has to be determined under the act with reference to the date on which preliminary notification was published in the State Gazette proposing its acquisition and according to the price which a buyer interested in agriculture would have paid for it to the owner having regard to its soil, the irrigation and other facilities, it commanded for its maximum utilisation for agricultural purposes. The highest factor that contributes to the market value of agricultural land, is the irrigation facility it commands, admits of no controversy. Irrigation facility commanded by the agricultural land is that water supply which it can command for crops to be grown on it. Sources of such water supply, apart from rain water, may be river water, tank water, well water etc. Where river water or tank water is unavailable or is insufficient for cultivation of agricultural lands open irrigation wells are sunk. If the soil of the land in which they are sunk is likely to cave in, the same will be prevented by raising

stone or brick or cement alls or by use of cement rings. The yield of water in wells vary from well to well. Intensive cultivation of agricultural land is done where the water yield of its irrigation well/wells is high. Such irrigation wells, even if had been dug up and walled effectively, may stop yielding water because of bore wells bored in the neighbouring lands or some other natural causes such as drought. In such events, the irrigation wells will become worthless. Hence, the advantage which an agricultural land may have because of the irrigation facility it had from the irrigation well, could only enhance the value of agricultural land depending upon the water yield from the well. Again when the agricultural land, the irrigation of which was possible from the water of the irrigation well, is acquired, the value of the land so acquired will have to be determined taking into consideration the irrigation facility it had from the well. In this situation the irrigation well in an acquired agricultural land, cannot have a value apart from the value of the agricultural land itself. The LAO, the Civil Court and the High Court, when have determined the market value of the irrigation wells and awarded compensation to the owners of those wells, having determined the market value of the acquired agricultural lands on the basis of nature of crops grown on them obviously taking into consideration, the water facility they had from the irrigation wells situated, in them, they have proceeded on a misconception that the market value of the irrigation wells had to be determined according to their construction costs and compensation was payable for them under the Act independently of the compensation payable for the agricultural lands. As the award of compensation for the irrigation wells of the appellants by the LAO, the Civil Court and the High Court was, in itself wholly unwarranted, question of granting by us further enhanced compensation for irrigation wells of the appellants situated in their acquired agricultural lands cannot arise. Hence, this appeal of the appellants, the owners of the acquired agricultural lands, must necessarily fail."

18. Yet, in another case decided by the Supreme Court in the case of *Union of India* vs. *Bal Ram and another,* AIR 2004 SC 3981, it was held as under:

> The High Court taking into consideration that certain other lands coming under different villages which had been acquired for the same purpose, namely Plan Development Area around Palam Airport in the vicinity of Delhi, found that compensation under market value of Rs. 47.224 per bigha would be reasonable and appropriate. In doing so, the High Court followed a decision of this Court in *Satpal* vs. *Union of India,* 1997 (11) SCC 423. The ground urged before us is that in view of the decision in *Kunwar Singh* vs. *Union of India*, 1998 (8) SCC 136 contiguity of villages could not by itself be sufficient to draw an inference of similarity in character of the lands in awarding the compensation and, therefore, the reasoning of the High Court is not correct. The High Court indeed did not rely upon the contiguity of the lands alone but it found that the nature/quality of the lands is by and large similar to those lands considered in Satpal's case. If that is the finding of the High Court, we do not think there would be any justification to make any distinction between lands which had been lying in Palam and Shahbad Mohamadpur. Therefore, the view taken by the High Court cannot be faulted with. The High Court also found that it would be unfair to discriminate between the land owners to pay more to some and less to others when the purpose of acquisition is same and lands are identical and similar, though lying in different villages, we find the judgment of the High Court to be fair and reasonable and no interference is called for."

19. No reasons have been stated by the Reference Court for the above categorisation of the acquired land. The evidence led by the claimants would stare in face of the State that the entire acquired land is

similarly situated and has some potential and utility. On record there is no evidence as to whether the entire land in question was agricultural land and creation of artificial differentiation can hardly be a justification in the facts and circumstances of the case. The provisions of section 23 of the Land Acquisition Act clearly postulates, and this concept is no more res-integra, that the market value has to be determined as on the date of publication of the notification under section 4. Considerations which are stale and are prior to the date of notification cannot fall within the ambit of the matters to be considered in determining the compensation. The above referred paragraph of the impugned judgment shows that the lands in question were subjected to assessment for revenue in 1991-92, particularly when there is no evidence on record that in the subsequent years the lands were assessed to revenue at the same rate. None of the claimants has deposed in that behalf and the respondents did not lead any documentary or oral evidence. The observations of the court is thus not based on any cogent and reliable evidence. On the contrary there is definite evidence led by the claimants in the form of documentary evidence as well as statements of witnesses, which we have already referred to, that the location and potential of the lands were comparable to the adjacent lands where the lands have been sold and even

compensation was awarded at the rate of Rs.2.12 lacs and above under different awards. Presuming that the lands in question were inferior in terms of location, potential and utility, still compensation awarded by the Reference Court was much less than the compensation which was determined in relation to the lands falling in revenue estate of the adjacent villages. The compensation determined by the Reference court thus is reasonable and in consonance with the statutory provisions enacted in section 23 of the Act. Another fact which was brought to our notice during the course of argument was a letter of the Government dated 6th May 2005, vide which the Government had taken a decision not to file any appeals against awarding of compensation in L.A. No.109 of 1997 decided on 19th September 2004, where somewhat similar compensation was awarded to the owners of the lands in village Rayambe. In regard to Land Reference No.98 of 1998 compensation was awarded at the rate of Rs.1.50 lacs. The mere fact that the State has not preferred any appeal in those cases by itself is no ground for awarding similar or same compensation to the claimants. The claimants would be entitled to get compensation at the rate, which they have proved before the court. In the Cross Objections/ Cross Appeals preferred by the claimants they have claimed compensation at the rate of Rs.3 lacs per hector. This claim is imaginary and illusory in as much

as there is no evidence to support such claim and, on the contrary, the evidence led by the claimants in terms of Ex. 19 will bind them as the same is comparable, relevant and material piece of evidence. There is no document on record in relation to the acquired land in the revenue estate of village Kavanai, which even remotely indicates that the claimants were entitled to any higher compensation. Thus to that extent even the Cross Objections/ Cross Appeals of the claimants cannot be accepted.

20. In view of our above detailed discussion we are of the considered view that all the appeals filed by the State are liable to be dismissed while the Cross objections/ Cross appeals of the claimants are to partially succeed and the claimants would be entitled to receive uniform compensation at the rate of Rs.1.50 lacs per hector. The claimants would also be entitled to statutory benefits of section 23 and 23(1A) of the Act as also 30% solatium of the land value. The claimants shall also be entitled to interest on the enhanced amount in terms of section 28 of the Act. All the appeals of the State are dismissed while the Cross objections/ Cross appeals of the claimants are partially allowed. However, in the facts and circumstances of the case we leave the parties to bear their own costs.

21. Civil Applications stand disposed of accordingly .

CHIEF JUSTICE

S.C. DHARMADHIKARI, J.